

DEPARTMENT OF CONSUMER AFFAIRS SUNSET REVIEW REPORT

I. INTRODUCTION

This report is prepared in response to the legislative requirements of SB 2036 (McCorquodale, Chapter 908, Statutes of 1994), which subjects Department of Consumer Affairs (Department) boards to periodic sunset review by the Legislature. As part of this review, the Department is required to submit an annual report that makes recommendations on the applicable boards to the Joint Legislative Sunset Review Committee (JLSRC). This report includes the Department's recommendations for the four boards under review during the 2000 and 2001 legislative sessions and also addresses "crosscutting" policy issues affecting all Department programs.

A. Sunset Review Process

The sunset provisions of SB 2036 apply only to the regulatory structure for a profession, and not to the regulation of the profession itself. This is the fifth year of the sunset review process that began in 1996 to determine which boards should be retained, which should be "sunsetted," and which functions should be incorporated into the Department.

The sunset law dictates that each of these boards becomes the direct responsibility of the Department and each board becomes inoperative on July 1, 2002, unless legislation is enacted to extend or repeal the sunset date. This report covers four boards, all of which are in their second round of review. One of the boards, the Board of Guide Dogs for the Blind, was sunset and subsequently recreated in 1998.

The four boards under review during 2000-2001 are:

- California Board of Accountancy
- Committee on Dental Auxiliaries
- Dental Board of California
- Board of Guide Dogs for the Blind

As required by the sunset law, this report to the Legislature contains the Department's recommendations relating to these boards, including whether each board should be terminated (sunsetted) or continued, and whether its functions should be revised. In addition, this report presents recommendations for priority issues related to each of the four boards.

B. Structural Relationship Between the Department and the Boards

The Department has a unique relationship with its boards. They are semiautonomous bodies whose members are appointed by the Governor and the

Legislature. (See Appendix A for an organization chart of the Department and its boards.) Board executive officers are appointed by their respective boards, and serve at the pleasure of those boards. Neither the Governor, the Department, nor the Legislature appoints these executives. In some cases, executive officers are subject to Senate confirmation. The Department provides administrative support to the boards but does not establish policy for their regulated professions. Nearly all Department operations are supported by special funds generated by the collection of board licensing and exam fees.

C. Summary of Recommendations

This report makes preliminary recommendations on issues identified by the JLSRC. The first section covers broad consumer policy issues, and the second addresses specific recommendations for each of the four programs.

The Department supports the continued regulation of the professions under review. The Department has not included a recommendation regarding the structure and continuation of the Dental Board, the Committee on Dental Auxiliaries, or the Board of Guide Dogs for the Blind. The Department does not recommend the adoption of the Uniform Accountancy Act for the regulation of the accountancy profession in California. The Department recommends an extended sunset review cycle for the other boards.

II. CROSSCUTTING ISSUES

The Department has identified the following as crosscutting issues affecting all boards and the Department's consumer protection mission:

- Complaint disclosure
- Board composition

A. Complaint Disclosure

A key component of consumer protection is ensuring the availability of information to consumers when they make decisions about selecting practitioners. Providing data regarding complaints filed against DCA licensees is a fundamental part of that information.

Pursuant to 7124.5 of the Business and Professions Code, in 1979 the Department developed a complaint disclosure policy (See Appendix B) designed

to provide guidance to the boards and bureaus on complaint disclosure. That policy was apparently crafted to provide maximum implementation flexibility to the boards and bureaus, and in recognition of the boards' independent authority to institute policy. While it states a Departmental policy regarding complaint disclosure, it is of dubious value because it clearly allows boards to implement whatever policy is determined by a board to be suitable.

In the fall of 2000 the Department undertook a review of board and bureau complaint disclosure policies. It is clear from that review that the boards have exercised their autonomous authority to implement various complaint disclosure policies. The result is a wide variety of practices (as permitted under current Departmental policy) within the Department.

The Department expects to conduct public hearings in the summer of 2001 to review the out-dated Departmental policy. Our review of the issue will be accompanied by a parallel review of the implications of California's Public Records Act and the Information Practices Act, which govern the disclosure of information held by government and personal privacy rights, on the Department's goal to provide complaint information.

It should be noted that even if the Department promulgates an improved complaint disclosure policy, it appears that the boards retain sufficient autonomy to disregard Departmental policy and implement practices they find preferable.

Recommendation: To ensure equitable treatment of all regulated professions and meaningful public protection, the Legislature may want to consider giving the Department clear statutory authority to establish a complaint disclosure policy for all boards to follow.

B. Balanced Professional and Public Representation on Boards

As a general rule, consumer protection is best served when consumers have balanced representation on the boards under the Department's purview. Consumers are generally represented by a board's public members. Prior to the initiation of the sunset review process, many boards had more professional members than public members. The sunset review process has been effective in bringing greater balance to most Department boards (see Appendix C for legislative changes to board composition). However, eight boards, including the Board of Accountancy, Committee on Dental Auxiliaries, and the Dental Board, have a super majority of professional members (see Appendix D for board composition information).

The primary rationale for professional members on licensing boards is their understanding of the profession they regulate. The Department agrees that technical expertise is important, particularly in disciplinary matters.

Board composition becomes especially significant when a quorum needs to be established. A quorum refers to the number of members required to be present at a meeting in order for a board to vote on significant issues. Currently, the number of board members required to establish a quorum varies among the boards. While a simple majority of members constitutes a quorum for most boards, some require a majority plus one. If a board is unable to establish a quorum, the members present cannot act on issues awaiting board decisions.

Recommendation: The Department recommends that all boards under its purview have a balance of professional and public members. In some instances, this may require either the reduction of the number of professional members or an increase in the number of public members. Generally speaking, the Governor appoints the majority of both public and professional members to the Department's boards. This long-standing practice should not be altered.